



M. Maggie Crotty

Filed: 2/23/2004

09300SB2778sam001

LRB093 15732 LCB 47869 a

1 AMENDMENT TO SENATE BILL 2778

2 AMENDMENT NO. _____. Amend Senate Bill 2778 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-622 as follows:

6 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,
8 which has been held unconstitutional)

9 Sec. 2-622. Healing art malpractice.

10 (a) In any action, whether in tort, contract or otherwise,
11 where ~~in which~~ the plaintiff seeks damages for injuries or
12 death by reason of medical, hospital, or other healing art
13 malpractice, the plaintiff's attorney or the plaintiff, if the
14 plaintiff is proceeding pro se, shall file an affidavit,
15 attached to the original and all copies of the complaint,
16 declaring one of the following:

17 1. That the affiant has consulted and reviewed the
18 facts of the case with a health professional who the
19 affiant reasonably believes: (i) is knowledgeable in the
20 relevant issues involved in the particular action; (ii)
21 practices or has practiced within the last 6 years or
22 teaches or has taught within the last 6 years in the same
23 area of health care or medicine that is at issue in the
24 particular action; and (iii) is qualified by experience or

1 demonstrated competence in the subject of the case; that
2 the reviewing health professional has determined in a
3 written report, after a review of the medical record and
4 other relevant material involved in the particular action
5 that there is a reasonable and meritorious cause for the
6 filing of such action; and that the affiant has concluded
7 on the basis of the reviewing health professional's review
8 and consultation that there is a reasonable and meritorious
9 cause for filing of such action. If the affidavit is filed
10 as to a defendant who is a physician licensed to treat
11 human ailments without the use of drugs or medicines and
12 without operative surgery, a dentist, a podiatrist, a
13 psychologist, or a naprapath, the written report must be
14 from a health professional licensed in the same profession,
15 with the same class of license, as the defendant. For
16 affidavits filed as to all other defendants, the written
17 report must be from a physician licensed to practice
18 medicine in all its branches. In either event, the
19 affidavit must identify the profession of the reviewing
20 health professional. A copy of the written report, clearly
21 identifying the plaintiff and the reasons for the reviewing
22 health professional's determination that a reasonable and
23 meritorious cause for the filing of the action exists, must
24 be attached to the affidavit, but information which would
25 identify the reviewing health professional may be deleted
26 from the copy so attached.

27 2. That the affiant was unable to obtain a consultation
28 required by paragraph 1 because a statute of limitations
29 would impair the action and the consultation required could
30 not be obtained before the expiration of the statute of
31 limitations. If an affidavit is executed pursuant to this
32 paragraph, the certificate and written report required by
33 paragraph 1 shall be filed within 90 days after the filing
34 of the complaint. The defendant shall be excused from

1 answering or otherwise pleading until 30 days after being
2 served with a certificate required by paragraph 1.

3 3. That a request has been made by the plaintiff or his
4 attorney for examination and copying of records pursuant to
5 Part 20 of Article VIII of this Code and the party required
6 to comply under those Sections has failed to produce such
7 records within 60 days of the receipt of the request. If an
8 affidavit is executed pursuant to this paragraph, the
9 certificate and written report required by paragraph 1
10 shall be filed within 90 days following receipt of the
11 requested records. All defendants except those whose
12 failure to comply with Part 20 of Article VIII of this Code
13 is the basis for an affidavit under this paragraph shall be
14 excused from answering or otherwise pleading until 30 days
15 after being served with the certificate required by
16 paragraph 1.

17 (b) Where a certificate and written report are required
18 pursuant to this Section a separate certificate and written
19 report shall be filed as to each defendant who has been named
20 in the complaint and shall be filed as to each defendant named
21 at a later time.

22 (c) Where the plaintiff intends to rely on the doctrine of
23 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
24 the certificate and written report must state that, in the
25 opinion of the reviewing health professional, negligence has
26 occurred in the course of medical treatment. The affiant shall
27 certify upon filing of the complaint that he is relying on the
28 doctrine of "res ipsa loquitur".

29 (d) When the attorney intends to rely on the doctrine of
30 failure to inform of the consequences of the procedure, the
31 attorney shall certify upon the filing of the complaint that
32 the reviewing health professional has, after reviewing the
33 medical record and other relevant materials involved in the
34 particular action, concluded that a reasonable health

1 professional would have informed the patient of the
2 consequences of the procedure.

3 (e) Allegations and denials in the affidavit, made without
4 reasonable cause and found to be untrue, shall subject the
5 party pleading them or his attorney, or both, to the payment of
6 reasonable expenses, actually incurred by the other party by
7 reason of the untrue pleading, together with reasonable
8 attorneys' fees to be summarily taxed by the court upon motion
9 made within 30 days of the judgment or dismissal. In no event
10 shall the award for attorneys' fees and expenses exceed those
11 actually paid by the moving party, including the insurer, if
12 any. In proceedings under this paragraph (e), the moving party
13 shall have the right to depose and examine any and all
14 reviewing health professionals who prepared reports used in
15 conjunction with an affidavit required by this Section.

16 (f) A reviewing health professional who in good faith
17 prepares a report used in conjunction with an affidavit
18 required by this Section shall have civil immunity from
19 liability which otherwise might result from the preparation of
20 such report.

21 (g) The failure to file a certificate required by this
22 Section shall be grounds for dismissal under Section 2-619.

23 (h) This Section does not apply to or affect any actions
24 pending at the time of its effective date, but applies to cases
25 filed on or after its effective date.

26 (i) This amendatory Act of 1997 does not apply to or affect
27 any actions pending at the time of its effective date, but
28 applies to cases filed on or after its effective date.

29 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)"